

Appl. No. 09/730,261
Atty Docket No. 8357
Response dated June 9, 2004
Reply to Office Action dated March 9, 2004

REMARKS

Claims 1-17 and 20-60 are now in the case.

Applicant has cancelled claims 18 and 19.

Applicant has amended independent claims 1, 20, 25 and 57 to clarify the meaning of the term "theme." Support for this amendment is found, at least, on page 15, first paragraph of Applicants' specification.

Applicant has amended claims 9-11 to correct terminology related to their dependency from Claim 1.

Response to the Office Action

The Rejection under 35 U.S.C. 112

Claims 9-11 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claims 9-11 have been rejected because they are recited as "The multiple scent-containing article of manufacture" and depend from Claim 1, which is directed to a method. In response, Applicants have amended claims 9-11 to recite "The method of Claim 1...." Accordingly, Applicants respectfully submit that the rejection under 35 U.S.C. 112, second paragraph has been overcome.

The Rejection under 35 U.S.C. 103 over Spector

Claims 1-60 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Spector (U.S. Patent 4,629,604). Applicants respectfully traverse this rejection. The reference does not establish a *prima facie* case of obviousness since it does not teach or suggest all of Applicants' claim limitations. Regarding Applicants' independent claims 1, 20, 25 and 57, Spector does not suggest a method wherein at least half of the scents share a common theme derived from, supported by, or based on only the scents in said multiple scent emitting article, rather than events taking place simultaneously in some other media. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

Spector does not teach or suggest using scents that share a common theme as described by Applicants. Independent claims 1, 20, 25 and 57, as amended, require that at least half of the scents on the multiple scent emitting article share a common theme derived from,

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supported by, or based on only the scents in the multiple scent emitting article, rather than events taking place simultaneously in some other media. Spector, on the other hand, discloses an aroma device using scents that coordinate with another media source such as a movie or TV show (See Col. 4, line 65-Col. 5, line 2). Spector does disclose the option of using his device "without a visual presentation" (Col. 5, lines 49-61). However, Spector makes no suggestion regarding the selection of scents in such a situation. Applicants' independent claims 1, 20, 25 and 57 clearly require that at least half of the scents share a common theme derived from, supported by, or based on only the scents in the multiple scent emitting article, rather than events taking place simultaneously in some other media. Spector's disclosure makes no reference to such a method of scent selection. Therefore, Spector does not establish a *prima facie* case of obviousness since he doesn't disclose an element of Applicants' claimed invention (see MPEP 2143.03).

Spector also does not establish a *prima facie* case of obviousness since he doesn't disclose one or more elements of Applicants' independent claims 14, 16, 26, 40, 48 and 56. Specifically, Spector doesn't disclose the following elements (identified by claim):

- Claim 14: breaking down the multiple scents associated with a particular place or environment into individual scent components,
- Claim 16: introducing into the environment multiple, complementary scents,
- Claim 26: obtaining input from the consumer and/or institution as to the consumer and/or institution's selection of one or more scents,
- Claims 40, 48 and 56: allowing the consumer to select the scent elements for insertion into or placement onto the multiple scent-containing article.

Since Spector does not teach or suggest any of the above-identified elements in his patent, a *prima facie* case of obviousness has not been established. As a result, Applicants contend that their claimed method is novel and unobvious and that the rejection under 35 U.S.C. 103(a) should be withdrawn.

Double Patenting Rejection

Claims 1-60 have been provisionally rejected under the doctrine of double patenting as being unpatentable over claims 1-31 of copending Application No. 09/730,333.


Applicants respectfully submit that this rejection is premature. Since neither the present application nor 09/730,033 has allowed claims, a determination as to the obviousness of their patented claims cannot be made. Applicants request deferral of this issue until one of the applications has allowed claims.

It is submitted that Claims 1-17 and 20-60 are in condition for allowance. Early and

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favorable action on all claims is therefore requested.

If the next action is other than to allow the claims, the favor of a telephonic interview is requested with the undersigned representative.

Respectfully submitted,
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